

STATE OF HAWAII
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
HONOLULU, HAWAII

October 11, 1985

MEMORANDUM 1985-30

TO: Heads of Departments and Agencies
FROM: Hideo Murakami, Comptroller
SUBJECT: Financial Obligation Via Lease

This memorandum follows our MEMORANDUM 1985-3, dated January 17, 1985, on the above subject. We have recently received a communication from the Attorney General's office that necessitates additional instructions on payment of lease rentals in certain holdover situations.

As MEMORANDUM 1985-3 advised, departments and agencies should avoid conflicting lease provisions regarding the rate of rent during a holdover period. A conflict has sometimes occurred in the past when a particular rate of rent would be paid during the holdover period as provided in an initial lease, but when the subsequent lease (or renewal or extension) would provide a higher rate of rent for that same holdover period. In these holdover situations, if our pre-audit of the related voucher payments detected the higher rate being paid for the holdover period, our requirement was that the department or agency conform to the rate of rent applicable during the holdover period (which would have been the lower rate provided in the initial lease.)

The Attorney General's office has now advised us, "As long as the Board of Land and Natural Resources approves, nothing in law prevents an agency from agreeing to pay increased rent in order to continue its tenancy at a particular location, and paying the increased rent retroactively." While this communication does not actually remove the conflict between the differing lease provisions that establish financial obligations, we recognize that it would be unfair to lessees (departments and agencies) and lessors to leave the practical payment problem unresolved.

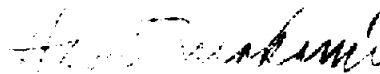
We have therefore agreed that retroactive holdover rental increments previously disallowed in the situation described in this memorandum will now be allowed to be paid, until departments and agencies can revise their lease agreement holdover provisions to avoid conflict with subsequent leases. (It is our understanding that deputies attorney general reviewing new leases and

renewals and extensions of existing leases will assist in making these language revisions.) Any lease (or renewal or extension) approved by the Board of Land and Natural Resources after March 31, 1986 will again be monitored in our pre-audit of vouchers to assure that the financial obligations established by the lease for hold-over periods are not exceeded in payment.

Your fiscal office should review its financial records to identify any previously disallowed holdover rental increments. If disallowance was due to the situations described in this memorandum, the disallowed amounts should be promptly vouchered for payment. A complete, detailed computation worksheet should support each such voucher.

We would like to take this opportunity also to remind departments and agencies to process their leases sufficiently in advance to avoid invoking holdover provisions when that is possible. Our MEMORANDUM 1982-4, dated February 10, 1982, advised that proposed leases should be submitted to this department for clearance at least three months prior to the projected occupancy date. This advance period allows not only our review of the justification for leased space, but also the Attorney General's review and the approval process of the Board of Land and Natural Resources. Occupancy of leased space prior to the approval of the Board results in delay of payment of lease rental to the lessor.

If these additional instructions leave any questions unanswered for your department or agency, please forward your questions in writing with sufficient explanation for our response.


HIDEO MURAKAMI
Comptroller